MAR 1956
HAROLD B. WILLEY, C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 734

ALBERT HERMAN LANDEROS,

Petitioner,

against

STATE OF NEW JERSEY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

J. MERCER BURRELL,
Attorney for Petitioner,
23 Howard Street,
Newark, New Jersey.

MORTON STAVIS,
Of Counsel,
744 Broad Street,
Newark 2, New Jersey.

Adams Press, Inc. 110

INDEX TO PETITION

PAGE

PETITION FOR WRIT OF CERTIORARI:

The Opinion Below 1

Statement of Grounds of Jurisdiction 2

Questions Presented for Review 2

Statutes and Regulations Involved 3

Statement of the Case 3

1. The facts as they were presented to the jury 4

2. The facts as they unfolded before the Supreme Court of New Jersey 7

How the Federal Issue Was Raised 15

The Reasons Relied on for the Issuance of the Writ 16

Conclusion 19

Cases Cited

Brown v. Allen, 344 U. S. 443 19

Chessman v. Teets, —— U. S. —— (Oct. 17, 1955) 17

Darr v. Burford, 339 U. S. 200 18

Mooney v. Holahan, 294 U. S. 103 (1935), rehng. den. 294 U. S. 732 (1935) 17

Pyle v. Kansas, 317 U. S. 213 (1942) 8, 17

State v. Landeros, 20 N. J. 69 (Sup. Ct., 1955) 15

State v. Maier, 13 N. J. 235 (Sup. Ct., 1953) 15fn

United States ex rel. Montgomery v. Ragen, 86 F. Supp. 382 (D. C. N. D. Ill. E. D., 1949) 17

Statutes Cited

PAGE

N.J.S.A. 2A:138-1 3

28 U. S. C. §1257(3) 2

INDEX TO APPENDIX

APPENDIX A:

Opinion of Supreme Court of New Jersey (20 N. J. 76, Sup. Ct. 1956) 21

APPENDIX B:

Mandate of Affirmance by Supreme Court of New Jersey of Judgment of Conviction of Union County Court, New Jersey 31

APPENDIX C:

Order of Supreme Court of New Jersey Denying Petition for Rehearing 33

APPENDIX D:

New Evidence Admitted to Record on Approval of Motion to Enlarge the Record 35

APPENDIX E:

Extract from Petitioner's Reply Brief Raising Federal Constitutional Issue 37

APPENDIX F:

Extract from Petitioner's Mimeographed Supplementary Memorandum Raising Federal Constitutional Issue 41

APPENDIX G:

Extract from Petition for Rehearing Raising Federal Constitutional Question 43

IN THE

Supreme Court of the United States

OCTOBER 1955 TERM

No.

ALBERT HERMAN LANDEROS,

Petitioner,

against

STATE OF NEW JERSEY

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

To the Chief Justice of the United States and the Associate Justices of the United States Supreme Court:

Petitioner respectfully asks this Court to issue a writ of certiorari to review the final judgment of the Supreme Court of the State of New Jersey which affirmed, by a vote of four to three, a judgment of the Union County Court, Law Division, convicting petitioner of rape.

The Opinion Below

The opinion of the Supreme Court of New Jersey affirming the conviction below is reported at 20 N. J. 76 (Sup. Ct.

1955), and is reprinted in the appendix to this petition, *infra* (App. *Infra* 20).*

Statement of Grounds of Jurisdiction

1. The judgment of the Supreme Court of New Jersey was rendered on November 21, 1955.

2. Application for rehearing was timely made and was denied on December 19, 1955 (App. *Infra* 33), making the court's judgment final as of that date.

3. The jurisdiction of this Court is invoked pursuant to the provisions of 28 U. S. C. §1257(3).

Questions Presented for Review

1. Was not the petitioner denied due process of law under the Fourteenth Amendment of the Federal Constitution by a conviction based upon testimony known by the law-enforcement arm of the State to have been false and under circumstances where decisive evidence favorable to the petitioner was knowingly suppressed by law-enforcement officers?

---

* References in this Petition are to three separate appendices:

(1) The printed appendix before the Supreme Court of New Jersey herein referred to as Print. App. While such printed appendix states that it is before the Superior Court of New Jersey, Appellate Division, it was, in fact, submitted to the Supreme Court of New Jersey because the Supreme Court certified the appeal to itself on its own motion.

(2) The mimeographed supplemental appendix before the Supreme Court of New Jersey, herein referred to as Mimeo. App.

(3) The appendix attached to this petition herein referred to as App. *Infra*.

2. May a state court, under the circumstances related in the preceding question, deny the petitioner an opportunity to bring before a new jury favorable evidence which had been deliberately suppressed by the prosecution and which would have materially affected the factual situation as presented to the jury which convicted the petitioner?

Statutes and Regulations Involved

None.

Statement of the Case

Petitioner was charged with the rape of Lois Ann Stiles, on January 30, 1953, in Westfield, Union County, N. J., in violation of N. J. S. 2A:138-1 (Print. App. 1a). The issue at the trial was solely that of identification. The petitioner denied any involvement with Miss Stiles and proved an alibi.

The case is most unusual because, by a fortunate circumstance, the Supreme Court of New Jersey on its own motion brought before it, in connection with its consideration of this case, confidential police reports which disclosed deliberate suppression by the prosecution of evidence decisively favorable to the petitioner.

The facts as they thus developed before the Supreme Court of New Jersey were actually quite different from those that were presented to the jury. It is the failure by the Supreme Court to permit a retrial so that these important suppressed facts may come for the first time before a jury that constitutes the issue upon this petition. The Court will observe that even though the suppressed facts came before the Supreme Court of New Jersey on its own motion, and passing reference is, in fact, made in the court's opinion to the existence of such facts (App. *Infra* 28), the

court's opinion nevertheless upholds the conviction purely upon the basis of the incomplete and false testimony given to the jury.

Indeed, the court's opinion gives no inkling of what the suppressed facts are, or even that there were *suppressed* facts. It decided the case ignoring the constitutional implications of such factual suppression, notwithstanding that the federal constitutional question was squarely raised before it.

1. The facts as they were presented to the jury.

The complaining witness, Miss Stiles, was a white girl who at the time of the attack was 19 years of age. At approximately 10:15 P.M., on the evening of January 30, 1953, she, unaccompanied, left a soda parlor and walked down a main street of Westfield, N. J., in the direction of her home (Print. App. 7a-24). She observed a man approaching her (Print. App. 8a-4 *et seq.*). She could not discern the features of the man as he came abreast of her and passed her (Print. App. 13a-8). The man walked past her, but then seized her from behind and pulled her some hundred feet into an adjacent empty lot (Print. App. 8a-30). There she was robbed and raped (Print. App. 9a-5 *et seq.*), her assailant keeping her face covered most of the time with her own jacket (Print. App. 9a-10, 23 to 29).

Miss Stiles emphasized at the trial that she was able to see her assailant only momentarily but noticed that he had a mustache (Print. App. 9a-30) and a distinctive double-banded ring (Print. App. 9a-28). She stressed that she was basing her identification of petitioner to a large extent on these two crucial elements of identification (Print. App. 11a-39 to 40, 17a-13).

Four days after the rape, on February 3, 1953, for reasons which were never explained at the time of the trial, Miss Stiles was taken to Belle Mead, an army depot in

New Jersey, where the petitioner, a Negro, was employed as a welder (Print. App. 11a-19, 25a-16 *et seq.*; 50a-18 *et seq.*). After a most thorough examination of him, including careful observation of his appearance (Print. App. 27a-27, 28a-6), voice (Print. App. 27a-38), apparel (Print. App. 109a-18), and physical characteristics and walk (Print. App. 109a-25), even feeling his hands and closely examining his wedding ring (Print. App. 29a-32, 30a-26, 109a-16, 174a-3), she failed to identify him as her assailant to the police (Print. App. 35a-40, 36a-1 *et seq.*).

Inexplicably, however, she contended, nevertheless, that while she was at Belle Mead she had recognized him as her attacker (Print. App. 47a-12 to 29). She was permitted to testify—entirely without contradiction from the police—that she had recognized his voice "right away" as that of her assailant (Print. App. 27a-38, 31a-7), and, further, that she had disclosed her recognition of his voice to either the Chief of Police of Westfield or the Police Lieutenant (Print. App. 31a-10). She also claimed that she had seen the assailant's distinctive ring on petitioner's hand at Belle Mead (Print. App. 30a-26, 174a-3), although she admittedly failed to disclose an identifying object of such self-evident importance to the Westfield police (Print. App. 30a-39).

Miss Stiles later stated that though she had not identified the petitioner to the police at Belle Mead she had identified him to "somebody else" on the trip home from Belle Mead (Print. App. 35a-18, 45a-22). She conceded, however, that she had spent the six weeks following the visit to Belle Mead examining numerous photographs shown to her by the police and making personal examinations of numerous other suspects (Print. App. 36a-15 *et seq.*, 37a-1 *et seq.*).

On March 9, 1953, six weeks after the rape, Miss Stiles was taken by the police to confront the petitioner again,

this time at the police station in Rahway, N. J. (Print. App. 11a-28, 38a-9, 29). He had been arrested in Rahway the day before on a charge of simple assault and battery (no sex offense was ever charged in this incident) (Mimeo. App. 28a) made by Miss Mary Ferranti (whom he described as a "hustler" who had provoked him by insulting him and his race after he had declined her solicitations) (Mimeo. App. 33a).

Notwithstanding Miss Stiles' absolute failure to identify the petitioner at Belle Mead or at any other time during those six weeks (Print. App. 35a-40, 36a-1 *et seq.*), she testified that she instantly identified him at Rahway as her assailant (Print. App. 40a-29 to 31). The prosecution disclosed nothing to the jury as to what had transpired between the complaining witness and the police immediately prior to this sudden change in Miss Stiles' ability to recognize the petitioner as her assailant.

Petitioner took the stand and denied the crime. At the time of the crime, he had been working in Scotch Plains, N. J., an entirely different town, welding cars (Print. App. 99a-40, 103a-5, 105a-9). Three disinterested witnesses supported this alibi, each recalling his presence in a garage with them that particular night for different personal reasons (John Rogerson, Print. App. 63a-20, 70a-3; racing driver Michael Fiore, Print. App. 82a-12, 84a-11, 84a-30); Louis Yannota (Print. App. 73a-15, 75a-24).

The case thus went to the jury as one where the testimony of the complaining witness albeit weak (the Supreme Court of New Jersey characterized it as "vacillating and uncertain" (App. *Infra* 23)) appeared to have the full support of the police and prosecution. There was however no corroboration of Miss Stiles' identification.

It was manifest, nevertheless, that the jury was deeply troubled by the key question which must haunt anyone who

considers the record of this case as made before the jury: How could Lois Stiles six weeks after the rape positively identify the petitioner as her assailant when only four days after the crime she failed to identify the petitioner as her assailant? The record shows that the jury specifically asked for "a partial review of the testimony concerning Lois Ann Stiles' statement as to her recognition of the defendant as her attacker at Belle Mead on February 3, 1953" (Print. App. 189a-29), a request which the trial court denied (Print. App. 189a-32). After seven hours of deliberation, the jury returned a verdict of guilty (Print. App. 189a-25, 191a-28 to 36).

Petitioner was sentenced to prison for 10 to 12 years (Print. App. 198a-32).

2. The facts as they unfolded before the Supreme Court of New Jersey.

As this case progressed on appeal, a startling story was uncovered which made the case wholly different from what it theretofore had been when tried before the jury.

The Supreme Court of New Jersey certified the appeal of petitioner's conviction directly to itself (App. *Infra* 21).

Oral argument before the Supreme Court of New Jersey commenced on October 10, 1955, but was not completed on such date, and was accordingly continued to the following week. During the first day of oral argument, petitioner's counsel repeated a challenge that had been made in the written brief that it was obvious that both the police and the prosecution knew much more than had been disclosed to the jury as to how Miss Stiles had come to reverse herself so squarely with respect to the identification of the petitioner.

As a result of numerous questions put on the first day of oral argument by members of the court to counsel for both the defense and the prosecution, the court in an un-

usual procedure, inquired whether counsel for both sides would consent to have the court consider the police records of all the towns which had evinced an interest in the petitioner *i.e.*, the towns of Westfield, Plainfield, Cranford, and Rahway, all of New Jersey, and, in addition, the presentence probation and psychiatric report (App. *Infra* 28). It was understood, of course, that counsel for the defense could then likewise examine these documents. Both sides consented, and counsel for the defense, for the first time, saw the hitherto secret police reports relating to the petitioner.

Oral argument on the appeal resumed on October 17, 1955. At this point, counsel for the defense presented to the Supreme Court of New Jersey a mimeographed Supplemental Memorandum and Supplemental Appendix (now before this Court) dealing with the entirely new facts which had been disclosed by the secret police reports, and squarely raising the constitutional question of the impropriety of a conviction where the prosecution deliberately suppressed evidence favorable to the defendant. *Pyle* v. *Kansas*, 317 U. S. 213 (1942) was cited to the court.

The facts as they unfolded through these documents from the police files now proved to be widely different from what they had been represented to be at the trial before the jury. Two separate sets of new facts were disclosed.

The first of these showed that Miss Stiles' original description of her assailant was entirely contrary to the actual appearance of the petitioner; in fact, it was perfectly obvious that she was describing someone other than him. They showed further that at the trial she had altered her description of the assailant to conform to what she knew was the petitioner's appearance; that far from making an equivocal identification of the petitioner at Belle Mead, as the jury was led to believe by her testimony and the tacit approval of her testimony by the police and prosecution,

she had instead there categorically stated to the accompanying police officers that he was *not* her assailant; and that she had changed her story so as to identify the petitioner at Rahway only after the Westfield police had told her that the petitioner had "attacked a white girl in Rahway" (Mimeo. App. 6a), the police thereby implying that the petitioner had been charged with a sex offense in Rahway (see Report of Police Lieutenant Hann of Westfield, Mimeo. App. 8a)—a statement by the Westfield police which was false (see complaint by Miss Mary Ferranti charging simple assault and battery, Mimeo. App. 28a).

The second set of facts—showing a widespread pattern by the police of false dubbing of this petitioner as a rapist and of their pinning various unsolved sex offenses in the area on him—provided the explanation for the suppression of facts favorable to the petitioner. The details of what was disclosed by the police files follow:

(a) The record as to what had actually happened at Belle Mead was no longer in the confused state presented to the jury, where Miss Stiles swore that she recognized the petitioner at Belle Mead, had there told the police that she had recognized his voice as being that of her assailant (Print. App. 27a-38, 31a-7) and had also recognized his distinctive ring (Print. App. 30a-26, 174a-3)—but nevertheless somehow or other did not identify the petitioner as her assailant to the police. Instead, these newly discovered records showed that Lieutenant Hann of the Westfield police had written a report after the Belle Mead visit, in which he said:

> "Lois listened to this man talk and looked him over very carefully and said that this man was not the one that raped her on January 30th, 1953." (Mimeo. App. 5a).

An amazing fact in this connection is that the prosecution put Lieutenant Hann on the witness stand at the trial, but

that neither he nor the prosecution made the slightest mention of this report favorable to the petitioner (Print. App. 49a-26 *et seq.*).

(b) It was now conclusively proved that Miss Stiles had made a false statement at the trial when she testified that she had identified the petitioner as her assailant to "somebody else" than the police (Print. App. 35a-19). The police records disclosed that the "somebody else" was a Miss Edna McLaughlin of Cranford, N. J., who had been raped by an unidentified person in Cranford on November 1, 1952 (Mimeo. App. 18a) and who was brought to Belle Mead together with Miss Stiles for possible identification of the petitioner (Mimeo. App. 8a). Like Miss Stiles, Miss McLaughlin utterly failed to identify the petitioner at Belle Mead as her assailant (Report of Lieutenant Hann, Feb. 25, 1953, Mimeo. App. 5a). Two reports by the Cranford police show moreover that Miss Stiles, directly contrary to her testimony at the trial, had actually told Miss McLaughlin at Belle Mead that her assailant was "a darker man" than petitioner (Report of Lieutenant Rosendale of Cranford, Mimeo. App. 22a). In fact:

> "After viewing him at Belle Mead on Feb. 5, she [Miss McLaughlin] was hesitant about saying due to Miss Stiles' saying she thought the person who had attacked her was of a darker color." Report by Lieutenant Rosendale of Cranford (Mimeo. App. 23a).

(c) The confidential police reports showed conclusively that Miss Stiles' assailant did not resemble the petitioner in the slightest.

Petitioner is a "tall, lanky individual" (Probation Report, Mimeo. App. 31a), 5 feet 11 inches in height and only 155 pounds in weight (Probation Report, Mimeo. App. 29a). His most striking facial characteristic at the time of the crime was a most unusual long black, drooped mustache re-

sembling a Genghis Khan type of mustache (see photographs of petitioner taken March 11, 1953, App. *Infra* 35). As such photographs clearly show, he has long, acquiline features, and thin lips. His complexion is light. He was born and reared in this country and has no accent.

The police reports brought before the Supreme Court disclosed the following original description of the assailant given by Miss Stiles to the police on January 31, 1953:

> "He was about 5-8 in highth, [sic] stocky built, square face, large lips, large hands, wore a light colored 'Be Bop' cap, form fitting jacket which ended at the waist line (dark color) light colored pants, which looked like they had ashes spilled on the front. I also noticed that he had a ring on one of his fingers which appeared to be gold and seemed to me to be a double band. I also recall that he addressed me as Seniorieta."
>
> * * *
>
> "Q. Do you think that you would be able to identify this man if you saw him again? A. I would recognize his voice I know and if he was dressed the same I would know him.
>
> * * *
>
> "Q. Did he speak good English or did he have an accent. A. He had an accent." (Statement of Lois Stiles, dated January 31, 1953, Mimeo. App. 3a.)

This original description of the assailant, fairly bristles with differences from the description Miss Stiles gave the jury of her assailant:

The very unusual long, drooping mustache of petitioner was not mentioned at all in this description of January 31, 1953, nor for that matter is any mustache there mentioned; and, in fact, there is no mention of any mustache in any of Miss Stiles' descriptions of the assailant until she was taken to Rahway almost seven weeks after the

rape (Mimeo. App. 6a). Her assailant, she told the police, was of "stocky build"; the petitioner, a tall, lanky man, 5 feet 11 inches in height and weighing only 155 pounds, is anything but stocky. Her assailant had "large lips"; a glance at the photographs of the petitioner shows anything but "large lips" (App. *Infra* 35). Her assailant had a "square face"; again a glance at the photographs shows that this is most certainly not the petitioner. Her assailant spoke with an accent; the petitioner is a native-born American who speaks English entirely without accent.

The vast differences between the assailant as originally described by Miss Stiles and the actual physical appearance of the petitioner were never disclosed to the jury.

(d) The secret police files finally provide the answer to the puzzling question of how Miss Stiles could possibly identify the petitioner at Rahway as her assailant when she had denied at Belle Mead about six weeks previously that he was the assailant. They show conclusively that she was specifically induced to identify him at Rahway, and thus to reverse herself squarely on the identification, by a false police story told to her following petitioner's Rahway arrest that he had attempted to "attack a white girl".

Thus, Miss Stiles' own statement, taken by Westfield Police Chief Albert Pfirrmann, on March 9, 1953 (Mimeo. App. p. 6a) states:

> "At about 1:30 p.m., March 9, 1953, Chief Pfirrmann and Detective Duelks of the Westfield Police Department came to the place where I am employed and informed me that the Rahway New Jersey Police had picked up a colored man who attempted to attack a white girl in Rahway last night and they asked me if I would be willing to go to Rahway to see if I could identify this man as the one who had attacked me in Westfield on January 30, 1953."

While Miss Stiles here used the term "attack" rather than "rape", there is no doubt that that word was used both by her and the Westfield police as being synonymous with "rape". Miss Stiles, it will be noted, used the same word "attacked" both for the Rahway incident and for her own rape in Westfield. And there is no doubt that the Westfield police referred to the Rahway incident as "attempting to rape a white girl". See Report of Lieutenant Hann and Detective Duelks dated March 11, 1953 (Mimeo. App. 8a). The truth was, as we have previously noted, that the petitioner's arrest in Rahway was for simple assault and battery (see Complaint of Miss Ferranti, Mimeo. App. 28a).

Thus, every crucial phase of the testimony of Miss Stiles at the trial was torpedoed by the true facts as they were developed by the newly discovered evidence brought into the case for the first time during the argument before the Supreme Court of New Jersey.

It was manifestly plain that these facts favorable to the petitioner and adverse to the testimony of Miss Stiles were fully known to the prosecution at all times. It is inconceivable that a jury would not have been affected most materially by these facts—particularly, when dealing, as the Supreme Court of New Jersey itself noted, with a witness whose "testimony as to the Belle Mead incident was vacillating and uncertain and undoubtedly affected her credibility in so far as her identification of the defendant was concerned" (App. *Infra* 23).

Other facts disclosed to the Supreme Court of New Jersey by these heretofore secret files provide the explanation why the prosecution suppressed these crucial facts. These police files revealed that the police had taken a citizen of no previous criminal record, happily married and the father of two children, honorably discharged from the United States Navy, a regular attendant at church, and

a hard-working Government employee who at the time of his arrest was simultaneously holding down three jobs (see Probation Report, Mimeo. App. 30a, 31a; Print. App. 99a-27 *et seq.*) and had determined that this citizen was to be the convenient solution for their unsolved sex crimes.

For the first time, it now became clear why the two women, Miss Stiles of Westfield and Miss McLaughlin of Cranford, had been taken to Belle Mead in an attempt to identify the petitioner. The secret files disclose that the police of an entirely different community, Plainfield, N. J., where the petitioner resided (Print. App. 90a-30) had falsely told the police of Westfield and of Cranford that the petitioner had been arrested in their town for "attempted rape" and that the visit to Belle Mead followed immediately thereafter (see Report of Westfield Detective Duelks dated April 2, 1953, Mimeo. App. 9a; Report of Cranford Police Lieutenant Rosendale dated Feb. 2, 1953, Mimeo. App. 19a). The records further show that there was absolutely no charge of any sex offense whatsoever leveled at any time against the petitioner in Plainfield, that on the contrary, after he had reported his car stolen, he was arrested on a charge of robbery and possessing a dangerous weapon (a linoleum knife he was bringing home from the place of purchase) and that these charges were dismissed as groundless by the municipal court of Plainfield with the full concurrence of the prosecutor of Union County, N. J. (Mimeo. App. 10a to 17a).

Notwithstanding the failure of the Belle Mead trip to produce the desired identification of the petitioner as a sex offender, the police in a neighboring community, Rahway, upon arresting him for simple assault and battery, likewise falsely dubbed him a rapist. In fact, a teletype was sent out by the Rahway police stating that the petitioner had been arrested for "attempted rape," and the police in the neighboring communities having unsolved sex crimes were specifically alerted (App. *Infra* 36).

Having thus falsely dubbed him a sex offender and communicated this characterization of him to the two women who had expressly failed and refused to identify him at Belle Mead, the police finally got the desired result. Both Miss Stiles of Westfield and Miss McLaughlin of Cranford completely reversed themselves. Each then identified the petitioner as her assailant.

Similarly, the police of Bound Brook, N. J., brought a Miss Cora DeGraaf who had been the object of an attempted rape in that town to confront the petitioner after the Rahway arrest, and the petitioner was thereupon indicted for that attempted rape. His conviction on this indictment has been reversed by the Supreme Court of New Jersey on a finding that the prosecutor grossly overreached at the trial (*State* v. *Landeros*, 20 N. J. 69, 74-75 (Sup. Ct. 1955)).

And it is of interest to note that the indictment of the petitioner for assault and battery arising out of the Rahway incident was *nolle prossed.** Moreover, no charges with respect to the Cranford rape have ever been brought to trial.

How the Federal Issue Was Raised

The federal question sought to be reviewed was raised sharply and precisely in the petitioner's reply brief to the State's brief when it first began to appear as a result of some statements in the State's brief that facts had been suppressed (App. *Infra*, 37), in petitioner's supplemental memorandum based upon the new evidence which resulted

---

* While it may be that one of the reasons for the *nolle prosse* of this Rahway indictment was the decision of the Supreme Court of New Jersey in *State* v. *Maier*, 13 N. J. 235 (Sup. Ct. 1953) holding assault and battery not to be an indictable offense, no substitute proceeding has been brought against petitioner.

from the court's bringing before it the heretofore secret police files (Supplemental Mimeographed Memorandum p. 10; App. *Infra*, 41), and again at extensive length in petitioner's petition to the Supreme Court for rehearing (App. *Infra*, 43).

The portions of the record relied upon are set forth in the Appendix hereto (App. *Infra*, 37 *et seq.*).

The Reasons Relied on for the Issuance of the Writ

The State court has, in a case depriving the petitioner of his liberty for a term of ten to twelve years (Print. App. 198a-33), so narrowly conceived the requirements of due process as to conflict with principles laid down by this Court.

The nondisclosure by the prosecution of pertinent facts in its possession which may establish or help to establish the innocence of the petitioner constitutes a flagrant denial of due process of law, requiring reversal of this conviction. The opinion of the Supreme Court of New Jersey, notwithstanding the issue was sharply raised, is silent upon this issue, which is of decisive importance to the proper administration of justice.

None of the new matters brought out for the first time before the Supreme Court and never revealed to the jury is tangential; separately and collectively they deal with the nub of the case. Indeed, it cannot be gainsaid that these facts would normally have switched the balanced facts to a verdict of not guilty. And in any event it is clear that these facts went to the very heart of the main factual issue—Lois Stiles' credibility.

Deliberately kept in ignorance by the prosecution as it was, the jury could not possibly have made a fair and accurate appraisal of her credibility because evidence in the possession of the prosecution alone, proving that her state-

ments at the trial were knowingly false, was suppressed by the prosecution.

The facts as they evolved before the Supreme Court of New Jersey thus bring this case squarely within the standards of due process of law enunciated in *Pyle* v. *Kansas*, 317 U. S. 213 (1942); *Mooney* v. *Holahan*, 294 U. S. 103 (1935), rehearing denied, 294 U. S. 732 (1935); and *Chessman* v. *Teets*, —— U. S. —— (Oct. 17, 1955). In fact, the case here made is stronger than those heretofore considered by this Court in the cited cases for here the falsity of the State's case is established by uncontradicted police records. There is accordingly no necessity for a hearing to determine the factual issue as to whether the testimony at petitioner's trial was false. The trial jury should under any circumstances have had the important information which now has been disclosed by the uncontradicted police files.

A case strikingly similar in many respects to the instant case is *United States ex rel. Montgomery* v. *Ragen*, 86 F. Supp. 382 (D.C. N.D. Ill. E.D. 1949). There, the prosecution had knowingly suppressed a statement by an attending physician that the crime of rape for which the defendant there was convicted was, in fact, never committed. There, as here, a Negro was charged with rape by a white woman. The court emphasized the special burdens of a Negro defendant charged with the rape of a white woman. It excoriated the suppression by the prosecution of evidence favorable to the defendant, holding (86 F. Supp. at 387).

> "It is repugnant to the concept of due process that a prosecutor introduce everything in his favor and ignore everything which may excuse the accused for the crime with which he is charged. It is manifest in this matter that someone identified with the prosecution, as the circumstances indicate very clearly, ignored a material

> piece of evidence which, if it had been brought to the attention of the jury or the trial judge, would certainly have resulted in the acquittal of this relator. * * *
>
> * * *
>
> "There was no trial here but a sham, one of false pretenses, and fraud. * * *"

The denial of the petitioner's constitutional rights in the face of the disclosures made in the secret police files is not substantially disputable.

This Court should grant certiorari to correct this denial of constitutional rights for the following reasons:

1. At issue in this case is a type of prosecution which goes to the heart of the fair administration of justice. The silence of the Supreme Court of New Jersey on this point, notwithstanding the fact that the issue was before it, makes it all the more important that this Court exercise its corrective jurisdiction.

2. It would seem pointless and unseemly to force the petitioner to engage in the now-familiar round of *habeas corpus* proceedings, beginning with the federal district court. This Court now has before it a record from which it can at this time determine the constitutional implications of the suppression of facts. As the Court pointed out in *Darr* v. *Burford*, 339 U. S. 200, at 216:

> "It is this Court which ordinarily should reverse State court judgments concerning local criminal administration."

In that case, this Court insisted that the filing of a petition for certiorari was indeed a condition for any subsequent relief by way of a writ of *habeas corpus* in the federal courts. Granted that a denial of such a writ has no substantive significance in subsequent *habeas corpus* pro-

ceedings, *e.g., Brown* v. *Allen*, 344 U. S. 443, the Court should not, in a case where the record at this stage permits of final disposition, deny to the petitioner the opportunity for speedy and final vindication of his constitutional rights.

CONCLUSION

We respectfully submit that this Court should grant certiorari and dispose of the important federal issues herein raised.

Respectfully submitted,

J. Mercer Burrell,
Attorney for Petitioner.

Morton Stavis,
Of Counsel.

Dated: March 16, 1956.